

**LAND DISTURBING CONSTRUCTION ACTIVITIES
INCLUDING CLEARING, GRADING, AND EXCAVATING ACTIVITIES
WHICH WILL RESULT IN THE DISTURBANCE OF FIVE OR MORE ACRES
PERMIT TO DISCHARGE STORM WATER**

Fact Sheet
WPDES Permit No. WI-S067831-2
August 2001

SUMMARY

Landowners of construction sites that will disturb five or more acres of land must apply for and obtain a construction site storm water discharge permit. This permit requires landowners of regulated construction sites to develop and implement a construction site erosion control and storm water management plan, and conduct visual inspections to assure the plan is effective. The plan must be prepared in accordance to the design criteria, standards and specifications outlined in the Wisconsin Construction Site Best Management Practices Handbook (WDNR Pub. WR-222 November 1993 Revision). This fact sheet provides information regarding the construction site storm water discharge permit.

BACKGROUND

Department of Natural Resources' Authority to Issue Permits

The Federal Water Pollution Control Act of 1972 (Public Law 92-500), also known as the Clean Water Act, requires that all point sources discharging pollutants to waters of the state be covered by a wastewater discharge permit. These permits specify the conditions under which wastewaters can be discharged so that water quality standards for receiving waters are met.

In November 1990, the United States Environmental Protection Agency (USEPA) issued final regulations that required National Pollutant Discharge Elimination System (NPDES) permits for storm water discharges associated with industrial activity. These regulations require permits for storm water discharges associated with eleven categories of industrial activities and municipal separate storm sewer systems. The federal regulation 40 CFR 122.26(b)(14)(x) identifies construction activity, including grading, clearing, and excavating, as one of the categories of facilities engaging in industrial activity. Planned construction activity for an area disturbing five or more acres which is ongoing as of October 1, 1992, and new construction activity started after October 1, 1992, are required to be covered by a permit to be in compliance with the federal Water Quality Act of 1987, which amends the Clean Water Act.

In 1976, the USEPA delegated the authority for issuing NPDES permits to the Wisconsin Department of Natural Resources (DNR). The DNR exercises its permitting authority through the Wisconsin Pollutant Discharge Elimination System (WPDES), authorized under Chapter 283, Wis. Stats. Wastewater permits issued by the state are also federal permits, and must have the approval of the USEPA.

The State of Wisconsin has the authority to issue two types of permits for the discharge of pollutants to waters of the state: 1) individual WPDES permits and 2) general WPDES permits. The DNR issues individual WPDES permits when the interaction between pollutant discharges and water quality is complex. These permits require careful scrutiny and must be tailored to the specific conditions of the discharge site. The DNR issues general WPDES permits to broad classes of dischargers where environmental protection can be achieved through a set of general provisions that apply to all dischargers in an industrial category. The state currently has approximately 20 general permits that cover discharges

from over 4000 industrial facilities. Most of these industrial facilities are permitted to authorize discharges of storm water.

DNR's Existing Efforts to Control Storm Water Discharges

The DNR has been using its regulatory authority in several program areas to control selected discharges of contaminated storm water. For example, the DNR requires some type of storm water controls through landfill, hazardous waste, and metallic mine licensing activities. The DNR also has the authority through federally promulgated effluent limitations to regulate storm water discharge quality for eight categories of industry (cement manufacturing, feedlots, petroleum refining, phosphate manufacturing, steam electric, coal mining, ore mining and dressing, and mineral mining and processing). Some of these effluent limitations are imposed through general permits, and some are imposed through individual permits. In addition, the DNR also has regulated, through other WPDES permits, the discharge of storm water contaminated with petroleum products.

The USEPA has finalized rules containing the NPDES General Storm Water Permit language. The rules were published in the Wednesday, September 9, 1992, Federal Register. Although the federal general storm water permit is not directly applicable to Wisconsin, provisions of the permit are being considered as Best Available Technology (BAT) and Best Conventional Technology (BCT) for storm water management. Since the Clean Water Act amendments require that storm water discharges meet BAT/BCT, the federal permit has important implications for states like Wisconsin which develop their own permits.

All dischargers submitting a completed DNR Notice of Intent (Form 3400-161) will be considered for coverage under the general construction site storm water discharge permit. (Industrial facility site storm water runoff will be covered under separate general permits). This general permit will be applicable to all eligible construction site storm water discharges, except initial discharges within Indian Country after September 30, 2001. This permit shall not be used to provide initial permit coverage to a storm water discharge within Indian Country after September 30, 2001. Contact the DNR Northeast Regional office at (920) 492-5800 or the DNR Central office at (608) 267-7694 for non-Indian discharges within Indian Country to determine if state permit coverage from the Department is required. Storm water discharges within Indian Country from non-tribal lands that have state coverage under this general storm water permit prior to September 30, 2001 may continue to be covered under this state general permit for purposes of state law.

WISCONSIN'S GENERAL CONSTRUCTION SITE STORM WATER EROSION CONTROL PERMIT

Purpose and Nature of the General Permit

The purpose of this permit is to define the conditions under which storm water associated with land disturbing construction site activity can be discharged so that waters of the state (including surface waters, groundwater, and wetlands) will be protected. This permit, in association with a separate permit that covers industrial facilities, is intended to meet the minimum permitting requirements for storm water associated with industrial activity as established by ch. NR 216, Wis. Adm. Code, and for states delegated by the USEPA in 40 CFR Part 122.

This permit will be issued by the DNR, and subsequently used to cover eligible construction site stormwater discharges. Unless notified by the DNR to the contrary, persons who submit a completed Notice of Intent (NOI) to the DNR are authorized to discharge storm water associated with land disturbing construction activity under the terms and conditions of this permit 14 working days after the

date the DNR receives the NOI. In summary, this permit requires the permittee to perform the following activities at regulated sites:

1. Develop construction site erosion control and storm water management plans designed to *prevent* storm water from becoming contaminated,
2. Implement construction site erosion control and storm water management plans, and
3. Conduct visual site inspections to assure plans are effective.

Several technical support documents are available to assist permittees. The DNR has developed a document entitled Wisconsin Construction Site Best Management Practice Handbook (WDNR Pub. WR-222 Nov. 1993 Revision). This document is meant to provide guidance in selecting best management practices for controlling storm water pollutants from regulated sites. In addition, the USEPA has developed a document for construction activities entitled "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices." (EPA 832-R-92-005 November 1993 Revision). This document provides detailed guidance on the development of construction site erosion control and storm water management plans and identification of appropriate best management practices for construction activity. It provides technical assistance and support for all requirements established under the NPDES permits for storm water point source discharges.

GENERAL PERMIT STRUCTURE

This general permit for construction activity is organized as follows:

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| Part I: | Applicability Criteria |
| Part II: | Notice of Intent and Termination Requirements |
| Part III: | Construction Site Erosion Control and Storm Water Management Plan |
| Part IV: | Effluent Limitations, Monitoring and Records Requirements |
| Part V: | General Permit Conditions |

CHANGES FROM PREVIOUS PERMIT REISSUANCE

The applicability of this permit in Part I.B. was changed as follows:

1. After September 30, 2001, this permit may not authorize the discharge of storm water discharges within Indian Country.
2. Storm water discharges must be in conformance with wetland water quality standards within ch. NR 103, Wis. Adm. Code.
3. Storm water discharges must be in conformance with the endangered and threatened resource protection requirements of s. 29.604, Wis. Stats. and ch. NR 27, Wis. Adm. Code.
4. Storm water discharges that may affect any historic property will need to comply with the historic property requirements pursuant to s. 44.40 (3), Wis. Stats.

The substantive content of specific sections of the permit is discussed below.

PART I. APPLICABILITY CRITERIA

A. Eligibility. The applicability criteria, as found in ch. NR 216, Wis. Adm. Code, has been clarified to specify which storm water discharges may be authorized under this general permit. The landowner of any disturbing construction activity, including clearing, grading and excavation, that results in the

disturbance of five or more acres of total land area, including areas that are part of a larger common plan of development or sale, is required to obtain a WPDES construction site storm water discharge permit. The 5-acre demarcation refers to amount of land disturbed by construction activities. Pit/trench dewatering on these sites is also permitted under this general permit.

Due to a Memorandum of Agreement between the State of Wisconsin and the Oneida Tribe of Indians of Wisconsin, signed on May 8, 1998, this general permit will not apply to storm water discharges from construction sites within the boundaries of the Oneida Indian Reservation that are seeking initial coverage under the permit after September 30, 2001. A specific permit shall be required within the boundaries of the Oneida Indian Reservation for initial coverage of storm water discharges from construction sites.

This permit states what types of storm water discharges are exempted and prohibited. Agriculture and silviculture activities are exempted. This permit also explicitly states that discharges not covered by this general permit may require authorization by another general permit or by a permit individually drafted for the discharge. Land disturbing construction sites violating conditions of this permit may be subject to enforcement action.

B. Authorization. A completed NOI must be submitted to the DNR in accordance with the requirements of Part II of this general permit for a site to be considered under this permit. The NOI is to be submitted by the landowner.

Through a Memorandum of Understanding with the Department of Commerce (COMM), construction site projects regulated by Comm 50 through 64 will not be required to obtain coverage under this permit. Most commercial building projects will be covered by this agreement. COMM will notify the DNR of projects covered under this exemption and this notification will constitute the notice of intent for these projects. This procedure should eliminate duplication of erosion and sediment control responsibilities between state agencies. The DNR has completed a similar agreement for Department of Transportation projects.

C. More than One Permit Can Apply. Each of DNR's general permits is specific to a *type* of wastewater discharge. Application of this construction site erosion control permit to a site that already has another general permit would be routine DNR procedure. When a site has more than one type of wastewater discharge, more than one permit is required to assure adequate environmental protection. If an industrial activity eligible for general permitting and a construction activity occur at a common site (for example, construction activity at a steam electric power station), compliance with the terms and conditions of two general permits is required (one for the construction activity and one for the industrial activity).

D. Transfers. This is a standard permit provision allowing transfer of the permit from the landowner to the person controlling the land disturbing construction activities. Such a transfer is allowable under existing state law.

PART II. NOTICE OF INTENT AND TERMINATION REQUIREMENTS

A. Deadlines for Notification. As stated in ch. NR 216, NOIs to be considered for coverage under this general permit must be received by the DNR 14 working days prior to the commencement of land disturbing construction activities that will result in the disturbance of five or more acres of land. The Department may withhold permit coverage beyond 14 working days in order to request additional information or to review project compliance with erosion control, wetland protection, endangered and threatened resources or historic property requirements. Use DNR Form 3400-161 unless directed otherwise by the DNR.

B. Application Retention. This section requires that a discharger submit information to the DNR (as a NOI to seek coverage under this permit) so that the DNR can determine whether or not coverage under this general permit is appropriate. These notification requirements are authorized by ch. NR 216, Wis. Adm. Code, and 40 CFR Part 122.28, and the information requested meets minimum federal requirements for NOIs.

C. Failure to Notify. Persons who fail to notify the DNR of their intent to be covered under this permit by not filing a completed NOI are in violation of ch. 283, Wis. Stats., ch. NR 216, Wis. Adm. Code, and the federal Clean Water Act, and may be subject to enforcement action.

D. Incomplete Notice of Intent. This section specifies that the DNR must notify the applicant of any deficiencies in the NOI or request a new NOI no later than 14 working days after the date the DNR receives the NOI.

E. Date Coverage Effective. Unless notified by the DNR to the contrary, applicants who submit a completed application in accordance with the provisions of this permit are authorized to discharge storm water from construction sites under the terms and conditions of this permit 14 working days after the date the application is received by the DNR. Applicants who have completed and submitted a NOI to the DNR and have not received a reply from the DNR 14 working days after the DNR received the NOI are also authorized to discharge storm water from construction sites under the terms and conditions of the general permit.

F. Where to Submit. NOIs shall be mailed to the appropriate DNR regional office or to the following address: Wisconsin DNR, Storm Water Program – WT/2, P.O. Box 7921, Madison, WI 53707-7921.

G. Use of Information. Confidential information must be identified and placed in separate documents. All other information in the NOI will be available to the public for inspection and copying.

H. Notice of Termination. When a construction site has undergone final stabilization and all land disturbing activities requiring coverage under the general permit have ceased, the permittee shall submit to the DNR, within 45 days, a signed Notice of Termination (DNR Form 3400-162). Final stabilization is defined as occurring when all soil disturbing activities are completed and uniform perennial vegetative cover with a density of at least 70 percent for the unpaved areas and areas not covered by permanent structures has been established or equivalent stabilization measures have been employed. Termination of coverage under this permit is effective upon the permittee's receipt of written confirmation from the DNR.

PART III. Construction Site Erosion Control and Storm Water Management Plans

A. Erosion Control Plan Requirements. This section discusses what to include in the construction site erosion control plan that is to be developed and implemented for each site covered by this permit. The construction site erosion control plan shall address pollution caused by soil erosion and sedimentation during construction, and up to final stabilization of the site. Each plan shall include a description of appropriate controls and measures performed at the site to prevent pollutants reaching waters of the state. The plan shall clearly describe appropriate control measures for each major activity identified in the NOI and the schedule during the construction process that the measures will be implemented. The construction site erosion control plan shall be prepared in accordance with good engineering practices and the design criteria, standards and specifications outlined in the Wisconsin Construction Site Best Management Practice Handbook (WDNR Pub. WR-222, November, 1993 Revision). The plan shall be completed prior to the submittal of the NOI and shall be updated as appropriate.

The Wisconsin Construction Site Best Management Practice Handbook contains limitations on suitable conditions for the application of best management practices. Tributary area limitations on the use of practices for trapping sediment in channelized flow conflict with the practices suggested in the January 7, 1987 version of the State Model Construction Site Erosion Control Ordinance. Where this occurs, the specifications contained in the Wisconsin Construction Site Best Management Practice Handbook shall take precedence over erosion and other pollutant control requirements contained in the State Model Construction Site Erosion Control Ordinance.

When permanent infiltration systems are used, appropriate on-site testing shall be conducted to determine if seasonal high water is within 5 feet of the bottom of the proposed practice. If permanent infiltration structures are to be used and there is a municipal well within 400 feet or a non-public well within 100 feet, the groundwater flow must be identified in accordance with the provisions specified in either Chs. NR 110 or 214, Wis. Adm. Code. [Note: Chs. NR 811 and 812 require minimum separation distances for infiltration systems, storm sewer systems and storm water ponds relative to ground water wells.]

Maintenance shall be in accordance with established guidelines. Where measures are not in accordance with guidelines, a description of the procedures to maintain in good and effective operating conditions, vegetation, erosion and sediment control measures, and other protective measures, shall be identified in the site plan.

B. Storm Water Management Plan Requirements. Pollution caused by storm water discharges from the site after construction is completed, including, but not limited to, rooftops, parking lots, roadways, and the maintenance of grassed areas shall be addressed by a storm water management plan. This portion of the permit discusses what management practices should be installed during the construction process to control peak flow, pollutants, and runoff volume that will occur after construction operations have been completed. Storm water management practices shall be in accordance with applicable state and local regulations. To the extent feasible, the plan shall consider efforts to increase on-site infiltration through conveyance, depression storage, and reduction of impervious area consistent with state or local development standards.

To assist with a storm water management plan the UW-Extension published The Wisconsin Storm Water Manual. Part 1 of this manual gives an overview of storm water planning, storm water legal issues, pollution prevention and best management practices. The second part of this manual, is an elaboration of the technical design guidelines for storm water management practices, including sections on hydrology; infiltration basins and trenches; wet detention basins; and artificial wetland storm water management. To order a copy of The Wisconsin Storm Water Manual (publication number G-3691-P) contact the University of Wisconsin Extension at (608) 262-3346 or toll free at (877) 947-7827. The cost of this manual is currently \$15.00 plus shipping and handling and orders may be made via credit card.

For any permanent structures, provisions shall be made for long-term maintenance. Long-term maintenance provisions for storm water management structures should be made with the local municipality. If the local municipality agrees to take over long-term maintenance responsibilities, a copy of the agreement shall be attached to the notice of termination. If the local municipality will not make such an agreement, alternative provisions that will be made for long-term maintenance of storm water management structures shall be identified, and a copy of the document mechanism by which it shall be enacted attached to the notice of termination.

Storm water management practices to control impacts from runoff volume and pollutants may include, but are not limited to: infiltration systems, flow attenuation, constructed wetlands, temporary or permanent ponds, combinations of these practices, or other methods which do not cause significant

adverse impact on the receiving surface water or groundwater. The plan shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels.

C. Amendments.

For those projects for which there has been earlier DNR review, planned amendments to construction site erosion control and storm water management plans are to be developed and submitted to the DNR at least 5 days prior to the initiation of modifications.

PART IV. EFFLUENT LIMITATIONS, MONITORING AND RECORDS REQUIREMENTS

A. Effluent Limitations. No specific effluent limitations are established for storm water discharges associated with land disturbing construction activity. Monitoring data collected from construction sites indicates that uncontrolled runoff can be expected to contain some pollutants at concentrations that exceed groundwater enforcement standards (ES, as defined in ch. NR 140, Wis. Adm. Code), some that exceed groundwater preventative action limits (PALs, as defined in ch. NR 140, Wis. Adm. Code), and some that exceed various surface water quality criteria developed to protect aquatic life and public health. However, the conditions under which these discharges will lead to violations of receiving water standards are not adequately understood. Consequently pollutant specific effluent limitations have not been established in this issuance of the general permit. This option to issue storm water permits without effluent limitations is fully supported by the federal program.

B. Monitoring. Weekly inspections of implemented erosion and sediment controls are required. Additional inspections are required within 24 hours of a 0.5-inch or greater precipitation event. This information must be submitted to DNR upon request.

C. Records. DNR will notify a permittee if changes in the construction site erosion control or storm water management plan or plan amendments are needed. DNR may, if warranted, perform reviews of detailed plans and specifications for storm water treatment practices.

D. Conformance with other Applicable Plans. The plan shall document other applicable county and local regulatory provisions that meet the requirements of the permit. If these additional provisions are more stringent than those provisions appearing in a permit issued pursuant to this rule, the plan shall include a description of how it will comply with these provisions. The construction site erosion control or storm water management plan shall also ensure and demonstrate compliance with applicable state and local waste disposal, sanitary sewer or septic system regulations.

E. Department of Natural Resources Actions. The DNR may notify the permittee at any time that the construction site erosion control or storm water management plan does not meet one or more of the minimum requirements of this permit for reducing and preventing soil erosion. The notification shall identify those provisions which are not being met by the construction site erosion control or storm water management plan, and identify which provisions of the construction site erosion control or storm water management plan requires modifications in order to meet the minimum requirements.

Part V. GENERAL PERMIT CONDITIONS

This section includes requirements to comply with this general permit and the applicable State laws and regulations.

- A. Non-Storm Water Discharges. This permit does not authorize the discharge of other wastewaters, such as cooling water, non-contact cooling water, process wastewater, or domestic sewage. Non-storm water discharges to storm sewer systems can result in significant contamination of surface or ground waters. This general storm water permit only authorizes the discharge of storm water associated with land disturbing construction activity. In order to discharge these other types of wastewaters, a facility must obtain additional coverage through another general or individual WPDES permit. These other permits will specify different conditions appropriate for the discharge so that surface and ground water quality is protected.
- B. Work Near Surface Waters. Other permits or approvals may be required of the permittee. The permittee is responsible for obtaining the necessary approvals.
- C. Duty to Comply. Any act of noncompliance with this permit is a violation of the permit and is grounds for enforcement action, for permit termination or modification, or denial of coverage under the permit. If the permittee files a request for an individual WPDES permit or a notification of planned changes or anticipated noncompliance, this action by itself does not relieve the permittee of any permit condition.
- D. Continuation of Expired General Permit. State and federal law limit the effective period of a permit to 5 years. However, this permit condition assures continued coverage for a discharger under a WPDES permit in the event that DNR is late in replacing this permit with a new or reissued permit.
- E. Duty to Halt or Reduce Activity. In the event of a management practice failure, this condition requires the permittee to modify or curtail operations until best management practices are restored or an alternative practice is put in place to control erosion.
- F. Other Information. This condition requires the permittee to promptly notify the DNR when he or she becomes aware of a failure to submit any relevant facts or a submittal of incorrect information.
- G-W. Miscellaneous Conditions. These conditions are authorized or required by existing state law.

Any individual wishing to comment on this general permit or wishing further information should contact the appropriate regional DNR office or:

Wisconsin DNR,
Storm Water Program – WT/2
P.O. Box 7921
Madison, WI 53707-7921

Telephone: (608) 267-7694